

APPEALS FROM DISTRICT COURT

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For basic information about representing yourself in District Court, see also the [Appendix of this publication](#).

Caution: This guide does not cover appeals from magistrate, metropolitan or municipal court, which have shorter deadlines than appeals from district court.

WHERE AM I APPEALING FROM AND WHERE SHOULD I APPEAL TO?

To decide where to appeal, you must first know which court you are trying to appeal **FROM**. If you are trying to appeal **FROM** a decision of the **MAGISTRATE**, **METROPOLITAN**, or **MUNICIPAL COURT**, you will appeal **TO** the district court. If that is your situation, there may be a separate information guide available from your local magistrate, metropolitan, or municipal court.

When you are appealing **FROM** a decision of the **DISTRICT COURT**, depending on the kind of appeal it is, the first document you file to start your appeal will either need to be filed with the district court or directly with the New Mexico Court of Appeals. To figure out whether the first document should be filed in the district court or Court of Appeals, see the "How do I Appeal?" section below. But whether you must file the first document in the district court or Court of Appeals, you will eventually need to file most of your paperwork in the Court of Appeals, which is the court that will decide your appeal.

Keep in mind that the New Mexico Court of Appeals has two offices – one in Albuquerque and one in Santa Fe. You can mail your documents to the Court of Appeals at P.O. Box 25306, Albuquerque, NM, 87125-0306 or P.O. Box 2008, Santa Fe, NM 87504. Or, you can file your documents in person at 2211 Tucker NE Albuquerque, NM or 237 Don Gaspar, Santa Fe, NM. The Court of Appeals can be reached by telephone in Albuquerque at 505-841-4618 or in Santa Fe at 505-827-4946.

WHO CAN APPEAL?

If you think the district court made a mistake when deciding your case, you have the right to appeal the district court's decision. An appeal can be a complicated, time-consuming process, and you may wish to hire an attorney to handle your appeal. If you do not know how to find an attorney, or if you cannot afford an attorney, there are a number of organizations that may be able to help you find an attorney. Some of those organizations are listed in the Resource List section of this guide.

WHAT CAN I APPEAL?

In general, you may only appeal a final, written order or judgment from the court. An order or judgment is considered final for purposes of appeal when it has decided all of the issues in the case and there is nothing left for the court to do. Sometimes it is difficult to know if an order of the court is final for purposes of appeal. If you appeal from an order that is not final and appealable, the appellate court may dismiss your appeal, but you will not lose your right to appeal. Once a final, written order is filed by the trial court, you can file a new appeal with the appellate court.

WHEN SHOULD I APPEAL?

In general, you must file an appeal from the district court within 30 days after the court files the final, written order in the case. In some cases, you may be able to get an extension of time from the district court to file your appeal. It is very important that you file your appeal on time. If you file your appeal late, you may lose your right to appeal forever. Because the deadline for an appeal is so important, you must be sure you understand whether you are trying to appeal a decision **FROM** a lower court **TO** the district court or **FROM** the district court **TO** the Court of Appeals because the time for filing each kind of appeal is different. Please see the section headed “Where Am I Appealing From and Where Should I Appeal To?” for more information.

WHY SHOULD I APPEAL?

The court cannot tell you why you should or should not appeal because that would be giving legal advice. If you disagree with the district court's decision and think the court made a mistake, you can appeal. Before deciding whether to appeal, you may wish to talk to an attorney. But you need to act fast so that you do not lose your right to appeal by failing to start your appeal on time.

HOW DO I APPEAL?

In most cases, you begin an appeal by filing a “notice of appeal” in the district court. In some cases, you begin your appeal by filing what is called a “petition for a writ of certiorari” in the New Mexico Court of Appeals. You may contact the Court of Appeals for these forms or visit the Court of Appeals' website at <https://coa.nmcourts.gov> to download and print the forms yourself.

In general, you use a notice of appeal to appeal a decision of district court that started in the district court, and the notice of appeal is filed with the district court itself. But if your case started in an administrative agency and then was appealed to the district court, you use a petition for a writ of certiorari to appeal the district court's decision, and the petition is filed directly with the Court of Appeals.

If you start your appeal by filing a notice of appeal in the district court, you will then need to write and file a “docketing statement” in the Court of Appeals. The docketing statement is due no later than 30 days after you file the notice of appeal, and you will need to pay the Court of Appeals a docket fee of \$125 unless you ask for and are qualified for a fee waiver. After you file the docketing statement, you must send a copy to the district court clerk's office and work with them to get the record proper prepared and sent to the Court of Appeals. The “record proper” is the term used for an official copy of all the documents that were filed with the district court clerk's office. It will also cost you some money to have the record proper prepared, and the amount will depend on the size of the record proper. The district court clerk will notify you of the cost, which must be paid in 10 days.

After the record proper is filed in the Court of Appeals, the court will begin to consider your appeal. You will then receive notice from the appellate court telling you what you must do next.

APPENDIX: REPRESENTING YOURSELF – BASIC INFORMATION

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WHO THIS GUIDE IS INTENDED TO HELP

This guide is intended to help individuals who are representing themselves, either as a plaintiff/petitioner or a defendant/respondent in a civil lawsuit or a domestic matter filed in a New Mexico State District Court.

That means this guide is not intended to be used for any other type of court, including Metropolitan Court, Magistrate Court or Municipal Court. It does not have information about appeals from these courts. It is not to be used by defendants in a criminal case.

HOW THIS GUIDE IS INTENDED TO HELP YOU

This guide is intended to be an informative and practical resource guide to understanding the basic practices of the court and the most common procedures encountered by people representing themselves without a lawyer (known as “self-represented litigants” or “pro se litigants”). It **IS NOT** a substitute for legal advice; it will not answer all your questions about what you need to do to represent yourself.

A WORD OF WARNING

Because the law is constantly changing, the court does not guarantee the legal sufficiency of this information guide nor does it guarantee that it meets your specific needs. If you represent yourself in a court case, you are acting as your own lawyer. That means you are expected to know and follow the law and court rules. The potential risks associated with representing yourself are not always obvious. That is why the court encourages anyone who is thinking about representing themselves to talk to a lawyer first.

If you are a tribal member, please be aware that this guide does not address tribal law. Your rights and responsibilities in state court may be different than your rights and responsibilities in tribal court.

GETTING HELP

Court employees are not lawyers and cannot tell you what you should do or how the law applies to your situation. Read more about what court employees can and cannot do at [Rule 23-113 NMRA](#).

Some courts have a resource center where court employees can help you with court procedures. They cannot give you legal advice. Check with your local district court to see what services are available to you.

While some courts offer packets of forms for certain kinds of court cases, there are not forms for every issue. Look for forms on the New Mexico Supreme Court website at <https://nmsupremecourt.nmcourts.gov> or check with your local district court to see what forms they offer. Sometimes you will need a lawyer to create legal documents for you.

To read about free and low-cost legal help, please go to the Resource List section of this guide.

ABOUT NEW MEXICO’S LAWS, RULES OF PROCEDURE, LOCAL RULES AND FORMS

As a person representing yourself, you should be familiar with the laws (called “statutes”), rules, local rules, and forms that govern or must be used in your court case. But, court employees cannot help you with this. New Mexico laws, rules, and forms are referred to using a very specific format. You will see four common formats in this guide.

For New Mexico Laws (Statutes) the format looks like this: Section 40-8-1 NMSA 1978

For New Mexico Rules of Procedure, the format looks like this: Rule 23-112 NMRA

For Local District Court Rules, the format looks like this: LR1-306 NMRA

For New Mexico Supreme Court Approved forms, the format looks like this: Form **4-209** NMRA

For more information about New Mexico’s Laws, Rules, Local Rules, and Forms, contact the New Mexico Supreme Court Law Library by telephone at 505-827-4850, by email at libref@nmcourts.gov, by regular mail at P.O. Drawer L, Santa Fe, New Mexico 87504-0848, or visit their website at supremecourtlawlibrary.org. If you are viewing the electronic version of this guide, you can click on the number of any statute, rule, or form that is mentioned in this guide to see the text of that statute, rule, or form. You can also get free access to all New Mexico state statutes, rules, and forms on the New Mexico Compilation Commission’s public access website. The New Mexico Compilation Commission is the official legal publisher for the State of New Mexico. Directions for how to find and navigate the Compilation Commission’s public access website can be found at the end of this section of the guide (page 6).

STARTING A COURT CASE

The pleading that starts a court case is called a “complaint.” Depending on the type of case, this first pleading can also be called a “petition” or an “application.”

The court case is started when a complaint is filed with the court. **Filing** a complaint requires a filing fee. Filing fees vary; check with the clerk’s office at your local district court for more information about filing fees. If your income is below a certain level, you may be entitled to a waiver of the filing fee. This is called “free process.” Ask the clerk’s office at your local district court for more information about free process.

Once a court case is started, the plaintiff must “serve” each defendant with a copy of all the court papers they filed.

SERVING THE COMPLAINT

Each defendant must be notified that a lawsuit has been filed against them through a process that is specified under the law. Whether you are trying to serve a person, a business or a governmental agency, this can be a complicated process. Please read [Rule 1-004 NMRA](#) carefully for the steps to follow when serving a complaint.

Even if you can’t find the defendant, you still have to serve them. You may have to ask the court for permission to publish a notice in the newspaper by using New Mexico Supreme Court approved [Forms 4-209](#) and [4-209A NMRA](#). Again, please read [Rule 1-004 NMRA](#) carefully for more details.

One thing is very important – **you** do not serve the defendant; your job is to **arrange** for someone else to serve the complaint for you.

ANSWERING A COMPLAINT THAT HAS BEEN FILED AGAINST YOU

It is important to file an “Answer” to the Complaint within 30 days from the date you are served. The date you are considered served with the Summons is determined by [Rule 1-004 NMRA](#). Otherwise, the plaintiff can ask the court for a judgment against you without you knowing anything is happening.

An “Answer” is a pleading. There are New Mexico Supreme Court approved Answer forms available for divorce and civil cases. Some courts offer a packet with the form used to answer a complaint; check with your local district court for more information.

There is no fee to file an Answer.

TALKING DIRECTLY TO A JUDGE, HEARING OFFICER, OR THEIR STAFF

Communicating with a judge or hearing officer without the opposing party being present is not allowed. This is why a judge or hearing officer cannot read your letters or answer your calls.

The judge’s or hearing officer’s personal staff – the Trial Court Administrative Assistant – can answer questions about scheduling but cannot give legal advice or tell you how a judge will rule on your case.

MONITORING THE PROGRESS OR STATUS OF YOUR CASE

The clerk’s office maintains a computerized “register of actions” for each court case. Every time something happens in your court case, whether you file a pleading, have a court hearing, or the court enters an order, it is added to the register of actions in your case. You can look up the register of actions at any time at www.nmcourts.gov. Select “On-Line Case Lookup” and follow the directions.

FILING MOTIONS

Asking the judge to take a specific action in your case requires filing a “motion.” A motion is the pleading you use to tell the judge your problem and to explain what action you want the judge to take. Some courts offer a packet of forms needed to file a motion. Check with your local district court for more information. Additionally, you must send a copy of any motion you file to all other parties (or their lawyer, if they have one). It may also be necessary for you to send a copy of the motion directly to the judge so the judge will know it has been filed. Read the local rules for your district carefully to determine how and when to send the motion to the judge.

TRIAL

You are entitled to a jury trial in many, but not all, types of lawsuits. If you are entitled to a jury trial, you must ask for one in writing and pay a jury fee. Read [Rule 1-038 NMRA](#) for more information about asking for a jury trial.

HEARINGS

How to ask for a Hearing:

- Asking a judge to schedule a hearing requires filing a pleading called a “Request for Hearing.” It is also called a “Request for Setting.”
- There are rules you must follow when you file a Request for Hearing. For example, when you file the request, you also deliver a copy to all other parties (or their lawyer, if they have one). Read more at [Rule 1-005 NMRA](#).

- Some courts require you to provide addressed-stamped envelopes with your request for hearing. Check the Local Rules or with your local district court for more information.
- Always check the Local Rules or with the court to see if you are required to turn in other forms in addition to the Request for Hearing.

Rescheduling a Hearing:

- Asking a judge to reschedule a hearing is called asking for a “continuance.” It means continuing the hearing to another date and time.
- Asking a judge for a continuance requires filing a motion. Some courts offer a packet of forms needed to file a motion; some even have a packet specifically designed to ask for a continuance. Check with your local district court for more information.

What happens at a hearing:

- At the hearing, each party will have a chance to tell the judge their side of the issue.
- It is important to bring your evidence, witnesses, and anything else that will help you prove your case. Because there are specific rules about presenting your evidence to the judge, you may wish to consult with a lawyer about how to present your case.

Helpful hints about hearings:

- **SHOW UP** – it is always important to show up to court. **If you are not in the courtroom when your case is announced, you may lose your case.**
- **BE ON TIME** – plan to be at the courthouse **early**. Remember that you will need to park, clear the security check, and find the courtroom. **If you are not in the courtroom when your case is announced, you may lose your case.**
- **Practice** – go to the court on a day before your hearing. Practice how long it takes you to get to the court, park, and find the courtroom. Go and see what the courtroom looks like. Go to a court hearing to see what happens.
- **How to dress** – dress neat and clean. Each court has a dress code. The judge can order you to be removed from the courtroom if you violate the dress code; **if you are not in the courtroom, you may lose your case.**
- **How to act** – court hearings are not like TV. Be respectful to the judge and to the opposing party at all times.
- **Talking to the judge** – stand when talking to the judge. Call the judge “your Honor.” Speak clearly and loudly enough to be heard. Do not interrupt the judge. Stay calm.
- **Cell phones** – each court has a cell phone policy. Check with your local district court about cell phones.
- **Children** – do not bring children into the courtroom unless the judge has given you permission to do so. Courts do not have a place where children can wait unattended.
- **Take notes** – bring a pad of paper and a pen to the hearing. Write down any orders the judge makes.

ORDERS AND JUDGMENTS

A “court order or judgment” is the judge’s instructions telling someone what they can or cannot do.

Creating an order or judgment – usually, at the end of a hearing, the judge will say who is to create the court order or judgment. Most courts do not create this paperwork for you. If you are instructed to create the court order or judgment, you may need to hire a lawyer to create one for you.

Enforcing an order – some courts offer a packet of forms needed to ask a judge to enforce a court order. Check with your local district court for more information.

IF YOU HAVE A DISABILITY

If you have a disability and need assistance, notify the court as soon as possible before any hearing or trial.

IF YOU NEED AN INTERPRETER

The court provides an interpreter in any language for free at court hearings or trials.

You are responsible for notifying the court that you need an interpreter, so make sure you reserve an interpreter in advance of any hearing or trial.

Use [Form 4-115 NMRA](#) to **reserve** an interpreter.

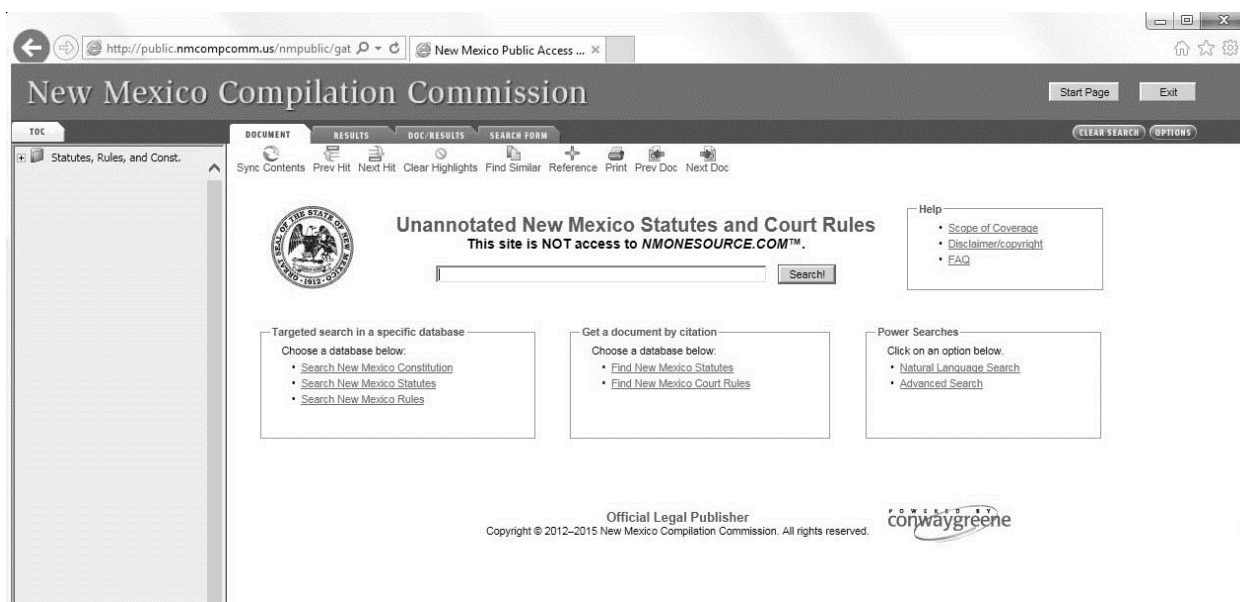
If you reserved an interpreter and then find out you don't need one (for example, if a hearing or trial was rescheduled), be sure to **cancel** the interpreter. Use [Form 4-116 NMRA](#) to **cancel** an interpreter.

HOW TO FIND STATUTES, COURT RULES AND FORMS ON THE PUBLIC ACCESS SITE PUBLISHED BY THE NEW MEXICO COMPIATION COMMISSION

The New Mexico Compilation Commission publishes the statutes, court rules and forms online for public use at the public access site located at: <http://public.nmcompcomm.us/nmnxtadmin/NMPublic.aspx>



Select **Desktop** or **Tablet/Smartphone** and click **OK** to enter the public access site.



This is the Start Page where you will begin the retrieval of statutes, court rules and forms. For step-by-step directions from the Start Page, consult the Help section in the upper right hand corner of the Start Page for the “Self Help Guide: How to Find Statutes, Court Rules and Forms.”